



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

01252006

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

FEB 17 2006

In re Application of:
NANDAKUMAR et al
Serial No.: 09/252,514
Filed: 18 February 1999
Attorney Docket No.: TI-23103

DECISION ON PETITION
TO WITHDRAW HOLDING
OF ABANDONMENT

This is a decision on the petition filed January 18, 2005, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is **DENIED**.

This application was held abandoned for failure to timely file a reply to the restriction requirement Office action mailed March 12, 2004. A Notice of Abandonment was mailed on December 15, 2004.

Petitioner asserts that in response to the restriction requirement Office action, a fully responsive Election was filed with a Certificate of Mailing and two postcard receipts. One postcard receipt was addressed to petitioner and the other addressed to Texas Instruments Patent Department. The postcard receipt addressed to petitioner was never received and the postcard receipt addressed to the Texas Instruments Patent Department was received on or prior to April 5, 2004, but was never stamped by the PTO. This is evidenced by a copy of the Election and a copy of the postcard receipt.

Petitioner further asserts that since the petitioner did not mail the postcard receipt to the Texas Instruments Patent Department and the postcard receipt was attached to the Election upon mailing on March 22, 2004, the postcard receipt could only have been mailed from the PTO mailroom upon receiving the Election. Moreover, petitioner asserts that the mailing of the postcard receipt from the PTO must have been during the period of response since it was received at the Texas Instruments Patent Department no later than April 5, 2004, well within the period of response.

The Election in response to the restriction requirement Office Action is not of record in the application file and cannot be located. However, the procedure for determining whether a response is considered timely filed in the Office is set forth in MPEP § 503.

Applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. For example, if the application has been held abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment.

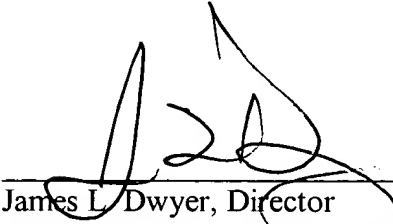
Petitioner does not present a stamped postcard receipt that properly identifies the Election as prima facie evidence of receipt in the PTO.

Absent a stamped postcard receipt, the date accorded the Election is the date of receipt by the Office. Since no reply was received until the copy of the Election was sent on January 18, 2005, there was no timely response to the restriction requirement Office action mailed March 12, 2004.

The application thus became abandoned as a matter of law on April 13, 2004. The petition is therefore denied.

Petitioner may wish to consider filing a petition under 37 CFR § 1.137(a) or (b) requesting that the application be revived. A petition under 37 CFR § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action; (2) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; (3) any terminal disclaimer required pursuant to 37 CFR § 1.137(c); and (4) the petition fee as set forth in 37 CFR § 1.17(m). No consideration to the substance of a petition will be given until this fee is received.

Any inquiry regarding this decision should be directed to Jose G. Dees, Special Program Examiner, at (571) 272-1569.



James L. Dwyer, Director
Technology Center 2800 - Semiconductors,
Electrical & Optical Systems & Components